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March 14, 2013

via electronic filing

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: **Written *Ex Parte* Presentation**
Closed Captioning of Internet Protocol-Delivered Video Programming,
MB Docket No. 11-154
Accessible Emergency Information, and Apparatus Requirements for
Emergency Information and Video Description, MB Docket No. 12-107

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," and the Technology Access Program (TAP) at Gallaudet University, respectfully submit this response to the February 26, 2013 *ex parte* filing of the Consumer Electronics Association ("CEA") in the above-referenced dockets ("*CEA Ex Parte*").¹

The *CEA Ex Parte* in large part merely rehashes arguments regarding the scope of apparatuses covered under Section 203(a) of the Twenty-First Century Communications and Video Accessibility Act ("CVAA")—arguments that CEA has already raised on numerous occasions and which the Commission duly considered and soundly rejected in the *IP Captioning Order*.² Members of the Consumer Groups have already offered detailed responses to CEA's arguments in an opposition to CEA's petition for reconsideration of the *IP Captioning Order* ("*CEA PFR*") and in several comments and *ex parte* filings in the above-referenced

¹ *CEA Ex Parte*, MB Docket Nos. 11-154 and 12-107 (Feb. 26, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7022125272>.

² Pub. L. No. 111-260, 124 Stat. 2751 (2010) ("CVAA") (codified at 47 U.S.C. § 303(u)(1)); *Closed Captioning of Internet Protocol-Delivered Video Programming*, Report and Order, 27 FCC Rcd. 787 (2012) ("*IP Captioning Order*").

dockets.³ In lieu of relitigating CEA's unavailing arguments at length, we instead refer the Commission to our previous filings and urge the Commission to deny the CEA PFR, affirm the portions of the *IP Captioning Order* challenged by the CEA PFR, and reject CEA's call for an inconsistent interpretation of Section 203(a) in the Commission's ongoing proceeding on emergency information and video description.

We nevertheless take this opportunity to briefly respond to several arguments raised in the CEA *Ex Parte* regarding removable media players. In particular, we note that the history of the Television Decoder Circuitry Act supports the Commission's decision to cover removable media players under Section 203(a) and undermines CEA's arguments about the cost of adding closed captioning functionality to such players. We also note that Subtitles for the Deaf and Hard of Hearing fail to measure up to CEA's own accessibility standards.

I. Requiring fixed media players to include closed captioning capability is consistent with the CVAA and the Television Decoder Circuitry Act.

CEA argues that the CVAA could not require removable media players to include closed captioning capability because DVDs and Blu-ray discs need not include

³ See:

- Petition for Reconsideration of CEA, MB Docket No. 11-154 (Apr. 30, 2012) ("*CEA PFR*"), <http://apps.fcc.gov/ecfs/document/view?id=7021914799>;
- Opposition to CEA PFR of TDI, et al., MB Docket No. 11-154 (June 7, 2012) ("*Consumer Groups Opposition*"), <http://apps.fcc.gov/ecfs/document/view?id=7021922030>;
- *Ex Parte* of NAD, et al., MB Docket No. 11-154, at 2 (June 22, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021973326>;
- *Ex Parte* of NAD, et al., MB Docket No. 11-154, at 4-5 (Oct. 9, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7022032026>;
- Reply Comments of TDI, et al., MB Dockets No. 11-154 and 12-107, at 10, n.29, 14-18 (Jan. 7, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7022100048>;
- *Ex Parte* of TDI, et al., MB Dockets No. 11-154 and 12-107, at 3 (Jan. 22, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7022109878>;
- *Ex Parte* of TDI, et al., MB Dockets No. 11-154 and 12-107, at 2-4 (Feb. 15, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7022122102>;
- *Ex Parte* of TDI, et al., MB Dockets No. 11-154 and 12-107, at 2-4 (Feb. 27, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7022125823>;
- *Ex Parte* of TDI, et al., MB Dockets No. 11-154 and 12-107, at 2-4 (Mar. 4, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7022127451>;
- *Ex Parte* of TDI, et al., MB Dockets No. 11-154 and 12-107, at 2-4 (Mar. 7, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7022128792>;
- *Ex Parte* of TDI, et al., MB Dockets No. 11-154 and 12-107, at 2-4 (Mar. 11, 2013), <http://apps.fcc.gov/ecfs/document/view?id=7022129787>.

captions.⁴ However, this argument ignores Congress's record of requiring closed captioning capability on video playback apparatuses separately from – and in advance of – requiring closed captions on associated video content.

Closed captioning requires the cooperation of both content owners and apparatus manufacturers, and thus poses a classic chicken-and-egg problem. Content providers undoubtedly would prefer that apparatuses support closed captions before the content owners begin to include captions on their content. At the same time, apparatus manufacturers undoubtedly would prefer that content owners include captions on their content before the manufacturers make their apparatuses capable of displaying captions.

While it is obviously possible to implement a “chicken-and-egg” approach by imposing closed captioning requirements on apparatus manufacturers and content owners simultaneously, Congress has also breached the impasse by requiring apparatus manufacturers to implement captioning capability first. In 1990, Congress passed the Television Decoder Circuitry Act (“TDCA”), amending Section 303 of the Communications Act of 1934 (“1934 Act”), which required all “apparatus designed to receive television pictures broadcast simultaneously with sound be equipped” with television pictures screens of thirteen inches or larger to include built-in closed captioning decoder functionality.⁵ Congress passed the TDCA many years in advance of requiring the video programming viewed on TDCA-covered apparatuses to be captioned under Section 305 of the Telecommunications Act of 1996.⁶

Congress rejected the premise that the Commission must cover apparatuses and programming simultaneously, specifically finding in the TDCA that “the availability of decoder-equipped television sets [would] significantly increase the audience that [could] be served by closed-captioned television, and [that] such increased market [would] be an incentive to the television medium to provide more captioned programming.”⁷ Adopting CEA’s “chicken-and-egg” requirement would have precluded the Commission from implementing the TDCA’s basic provisions, in stark contravention of Congress’s plainly stated intent – an outcome which the Commission logically and correctly avoided.⁸

That the CVAA does not require Blu-ray discs to include closed captions does not undermine the Commission’s sensible decision to require removable media players to include closed captioning capability. As the Commission has recognized, “the very purpose of Section 203 was to expand coverage of the [TDCA’s] captioning requirement covering television sets with screens greater

⁴ CEA *Ex Parte* at 2-3.

⁵ P.L. No. 101-431, 104 Stat. 960 (codified at 47 U.S.C. § 303(u), 330(b)) (“TDCA”).

⁶ P.L. No. 104-104, 110 Stat. 56 § 305 (codified at 47 U.S.C. § 613).

⁷ TDCA § 2(9).

⁸ See *Amendment of Part 15 of the Commission’s Rules to Implement the Television Decoder Circuitry Act of 1990*, Report and Order, 6 FCC Rcd. 2419, 2420, ¶ 1 (1991).

than 13 inches, to include consumer devices of various sizes and types.”⁹ Including removable media players within the scope of Section 203’s requirements prior to requiring captions on removable media is clearly in line with Congress’s intent in enacting the CVAA and its historical approach under the TDCA.

II. The TDCA demonstrates that unfounded fears over increases in the price of consumer electronics are not a valid basis for denying equal access to video programming to people who are deaf or hard of hearing.

CEA also argues that the costs of implementing closed captioning functionality in removable media players will “impose significant additional costs on these products, costs that the consumer market will not support.”¹⁰ This argument mirrors the nearly 25-year-old arguments against the TDCA of the Electronic Industries Alliance, CEA’s predecessor, that requiring closed captioning decoders in television sets would “significantly raise” the price of television sets and make them less affordable to people with limited incomes.¹¹

EIA’s fears that closed captioning functionality would send the price of television sets spiraling out of control never materialized. Congress specifically found in the TDCA that “technology is now available to enable that closed-caption decoding capability to be built into new television sets during manufacture at a *nominal* cost by 1991.”¹² And just two years later, EIA abandoned its public opposition to closed captioning functionality and launched a national advertising campaign touting the benefits of closed captioning technology.¹³

CEA’s complaints about the cost of adding captioning technology to removable media players are similarly overblown. In 1976, PBS estimated that captioning decoder chips would cost as much as \$100 apiece in bulk.¹⁴ But even in 1990, more than twenty years ago, the Senate Report on the TDCA noted that decoder chips had become available for “no more than \$5 per chip.”¹⁵ Even consumer electronics manufacturers recognized that adding decoder chips would add only \$5 to \$15 to the retail price of televisions.¹⁶

⁹ *IP Captioning Order*, 27 FCC Rcd. at 847-48, ¶ 102

¹⁰ *CEA Ex Parte* at 3.

¹¹ See Karen Peltz Strauss, *A New Civil Right: Telecommunications Equality for Deaf and Hard of Hearing Americans* 233 (2006); EIA: Electronic Industries Alliance (last visited Mar. 12, 2013), <http://www.eciaonline.org/eiastandards/> (The former sectors of EIA are . . . now part of . . . [CEA]).

¹² TDCA § 2(8) (emphasis added).

¹³ Strauss at 237, 239.

¹⁴ *Amendment of Subpart E, Part 73, of the Commission’s Rules and Regulations, to Reserve Line 21 of the Vertical Blanking Interval of the Television Broadcast Signal for Captioning for the Deaf*, Docket No. 20693, 63 F.C.C.2d 378, 384, ¶ 18 (1976).

¹⁵ S. Rep. No. 101-393, at 1442 (1990).

¹⁶ *Id.*

CEA's conclusory and unsupported assertions that incorporating closed captioning functionality has now become prohibitively expensive despite more than two decades of technological development in the consumer electronics industry defy logic and common sense. Software-based players can now be upgraded to support captioning functionality at effectively zero marginal cost—for example, a functional closed captioning decoder for DVD players, coded in just ten days of part time work by Dr. Christian Vogler at Gallaudet University, is integrated into the *xine* media player and is freely available for use under an open source license.¹⁷

Moreover, Congress recognized more than twenty years ago that the costs of adding hardware-based caption decoder solutions were “nominal” — and even consumer electronics manufacturers including Sanyo and Zenith conceded that “over time . . . the costs [would] decrease and *eventually [would] be absorbed* by, among other factors, reduced labor costs and decreased costs in chip production.”¹⁸ CEA offers no evidence to suggest that this predicted reduction in price failed to materialize.

The history of the TDCA demonstrates that the desire of consumer electronics manufacturers to avoid the cost of closed captioning functionality is not a valid or sensible basis for denying the civil right of people who are deaf and hard of hearing to access video programming on equal terms. CEA's unfounded concerns over the cost of adding closed captioning functionality should not — and cannot — lead the Commission to contravene Congress's obvious intent by exempting removable media players from the scope of Section 203(a)'s requirements.

III. Subtitles for the Deaf and Hard of Hearing do not successfully advance the goal of equal access embedded in the CVAA, the TDCA, or CEA's own accessibility standards.

Finally, CEA insists that requiring removable media players to support closed captions would hinder the “successful” use of Subtitles for the Deaf and Hard of Hearing (“SDH”).¹⁹ We strenuously object, however, to CEA's implication that SDH are somehow more accessible than closed captions or are endorsed by the deaf and hard of hearing community. Of course, as the Commission recognized in the *IP Captioning Order*, SDH do not adequately serve the needs of viewers who are deaf and hard of hearing because they lack the user controls afforded by closed captions.²⁰

Moreover, even CEA's *own standard* for digital closed captioning, CEA-708, recognizes the critical importance of user controls, and forms the very basis of the

¹⁷ See the *xine* project, *Features* (last visited Mar. 13, 2013), <http://www.xine-project.org/features>.

¹⁸ *Id.* (emphasis added).

¹⁹ CEA *Ex Parte* at 3.

²⁰ *IP Captioning Order*, 27 FCC Rcd. at 846, ¶ 100.

Commission's user controls requirements.²¹ It is unclear on what basis CEA believes that an accessibility feature that fails to meet even CEA's own standards for accessibility could be "successful."

Regardless, from the perspective of viewers who are deaf and hard of hearing, SDH are substantially less "successful" than closed captions. We urge CEA to bring an end to its misguided campaign to avoid implementing closed captioning functionality on removable media players and to turn to the task of ensuring that all consumers who purchase removable media players and discs can experience the benefits of video programming on equal terms.

Please don't hesitate to contact me if you have any questions.

Respectfully submitted,

/s/

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²¹ See *id.* at 846, 850-853 ¶¶ 100, 109-112.

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